

**CITY OF SHORELINE
HEARING EXAMINER**

ORDER GRANTING THE CITY'S MOTION FOR SUMMARY JUDGMENT

I. BACKGROUND INFORMATION

A. PROJECT INFORMATION SUMMARY

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| 1. Project Numbers, Addresses, and Applicant | 1. Clearing and Grading Project No. 106006
1437 NW 186 th , Shoreline, WA 98177
Michael Rasch on behalf of owner Sylvia Moren

2. Clearing and Grading Project No. 105821
1445 NW 186 th , Shoreline, WA 98177
Michael Rasch on behalf of owner Norma Mc Gee |
| 2. Proposed Project Description | 1. <u>Moren property</u> : Remove five significant trees located within a steep slope area.
2. <u>McGee property</u> : Remove five significant trees located within a steep slope area. Top one significant tree located within a steep slope area. |
| 3. Parcel Numbers | 1. <u>Moren</u> : 358590-0765
2. <u>McGee</u> : 358590-0760 |
| 4. Date Initial SEPA DNS Issued:
Date SEPA DNS Reissued | October 21, 2004
July 28, 2005 |
| 5. Appellants: | Elaine Phelps, Lead Representative of Appellants
Nancy S. Rust
Wayne Cottingham
Paul Blauert |

B. SUMMARY OF APPEALS

1. Initial Appeal of DNS:

The Initial Appeal of the DNS was submitted on November 1, 2004 and the Appeal Hearing was held on March 2, 2005: On March 16, 2005, the Hearing Examiner upheld the appeal and rescinded the Clearing and Grading Project permits subject to additional environmental review. Specific areas of additional review included in the decision but were not limited to:

- Cumulative impact of potential tree removal based on the pending lawsuits and related plans of the Innis Arden Club, as appropriate;

- Increase in potential surface water runoff due to removal/topping of trees and the impact on the steep slopes and stream in the Blue Heron Reserve;
- Impact on Wildlife Habitat; and
- Appropriate Conditions and Mitigation.

2. Appeal of the Reissued DNS

An Appeal of the Reissued DNS was submitted on August 10, 2005 and an Amended Appeal was submitted on August 26, 2005: Because of a delay in obtaining documents from the City, the appellants were allowed additional time to amend their appeal. The appellants appealed the Reissued DNS's because they "... find that the City has in no serious sense complied with the requirements of the Hearing Examiner ...". Under the provisions of SMC 20.30.210 they appealed on the following grounds:

- B. The Director failed to follow applicable procedures in reaching the decision;
- D. The findings, conclusions or decision prepared by the Director or review authority are not supported by substantial evidence.

3. Procedural History of Second Appeal

On August 22, 2005, the following schedule was established for this appeal:

September 21, 2005, 1:00 pm. Pre-Hearing Conference to clarify appeal issues and hearing procedures; and

September 29, 2005, 7:00 pm. Appeal Hearing

In addition, it was requested that any pre-hearing motions were to be submitted by Friday, September 9th and that any responses to those motions were to be submitted by Friday, September 16th. It had been noted that the Hearing Examiner would rule on those motions as appropriate either at the pre-hearing conference or at a subsequent time.

4. Motions and Responses Received

The following Motions and Responses and their general subject matter were received relative to this appeal. These were all considered by the Hearing Examiner in the summary judgment.

a. Motions: September 9, 2005

Appellant:

1. Issue Summary Judgment to Rescind the permits for these projects with reprimand of City for not complying with previous instructions of HE
2. Issue Subpoenas to Fosmire, Hollinrake, Rasch, Taber and Jacobs as well as Marcus Byers who did the third party geotechnical review.

Applicant:

1. Order the appeal be dismissed with prejudice for lack of standing.
2. Order appellants to provide witness list to the City & Applicant by September 23rd.
3. Enter an order that clarifies the issue the HE will consider and what evidence appellants may present
4. Enter an order that inadmissible evidence will not be allowed.

- City:**
1. Limit the issues identified in their memo
 2. Appellant provide list of all exhibits by September 22nd and exclude all of those not submitted.
 3. Provide a list of all witnesses by September 22nd.

b. Responses / Motions: September 16, 2005

- Appellants:**
1. Responded to Rasch's Motions
 2. Responded to City's Motions

- Applicant:**
1. Responded to Phelps Motion for Summary Judgment and discussed what had been done in response to Hearing Examiner's previous decision
 2. Responded to Phelps request for a subpoena for him at the Hearing as well as that of Mr. Byers – stating that Ms. Phelps should pay for Byer's presence

Eglick, Innis Arden Club: Responded on Issue of Subpoenas for Board Members of Innis Arden Club.

- City:**
1. Requested the Hearing Examiner issue summary judgment in favor of the City.
 2. As an alternative, requested that the HE establish the relevance of each person the appellant has requested to be subpoenaed.

5. Other Documents

The following documents were submitted as part of the City's effort to respond to the issues raised in the Hearing Examiner's decision on the first SEPA Appeal:

- Letter from Flannery Collins, Assistant City Attorney, to Michael L. Jacobs, President of Innis Arden Club, Inc. and response dated April 28, 2005.
- Letter from Flannery Collins, Assistant City Attorney to Michael J. Rasch (Applicant) and response with attachments dated April 26, 2005
- Report from Raedeke Associates, Inc. regarding Wildlife Habitat Assessment of two Grading and Clearing Permits.
- City of Shoreline proposed Scope of Work dated June 22, 2005 and proposal from Kleinfelder dated July 11, 2005;
- Geotechnical Report dated July 25, 2005, of Kleinfelder, Inc. of the project properties;
- City's proposed scope of work for supplemental to Kleinfelder dated September 1, 2005;
- Supplemental Geotechnical Report dated September 8, 2005, of Kleinfelder, Inc. of the project properties;
- Reissuance by the City of Shoreline of SEPA Threshold Determination of Non-Significance (DNS) dated July 28, 2005 of the subject properties; and
- Statement of Appeal dated August 10, 2005 and Amended Statement of Appeal dated August 26, 2005.

In addition there were numerous e-mails dealing with other issues that were reviewed such as: timeliness of receipt of documents from the City, lack of communication during the process

leading to the reissuance of the DNS, lack of adequate time for preparation for the hearing, City bias against the appellant, practice of law by a lay person, and lack of definition in the requests for subpoenas.

II. CITY'S MOTION FOR SUMMARY JUDGMENT

The City's September 16, 2005 Motion for Summary Judgment identified what they had done to comply with the direction of the Hearing Examiner in his decision of March 16, 2005. This included:

1. Sent two separate letters, one to the Innis Arden Club and one to Mr. Rasch, requesting information on: (1) any pending lawsuits regarding removal of trees in the Blue Heron Reserve as well as the areas adjacent to the Reserve and the two properties at issue; (2) any plans for potential tree removal; and (3) a response to highlighted comments regarding Board approval of cutting the Blue Heron Reserve.
2. Reviewed the responses received from the Innis Arden Club and Mr. Rasch in order to address cumulative tree cutting in the Innis Arden Reserves. The Club's response indicated no lawsuits were pending, and that no further tree removal was planned for the Blue Heron Reserve. The Club did indicate that approximately 40 trees were potentially going to be altered due to the Club's belief they were hazard trees. The City also received communication from Mr. Rasch indicating no lawsuits were pending. Mr. Rash's communication attached the judge's order dismissing the pending lawsuit.
3. Received a wildlife habitat assessment from Raedeke & Associates.
4. Provided a scope of work to a geotechnical firm, Kleinfelder, Inc. to complete additional environmental review. Specifically, the City requested that Kleinfelder address the following: (1) review Dennis Bruce's report in full and analyze all issues raised by that report; (2) review reports of GeoEngineers and RMI; (3) examine the potential increase in surface water runoff due to the removal/topping of trees and the impact of that potential increase on the slope stability, soil movement and stream in the Blue Heron Reserve; (4) set forth any appropriate conditions and mitigation required that have not been addressed the the applicant's geotechnical reports. Specifically, what, if any, erosion control is necessary?
5. Reviewed geotechnical report supplied by Kleinfelder, Inc.
6. Requested a supplemental report from Kleinfelder in order to address the approximately 40 trees that the Innis Arden Club had indicated might be altered in the Blue Heron Reserve.

III. PRE-HEARING CONFERENCE

The Pre-Hearing Conference was held on Wednesday, September 21, 2005 in Room 305 of the Shoreline Business and Professional Center (City Hall). Since all parties were present the

meeting started at 12:55 pm and was adjourned at 1:10 pm. A recording of the meeting and all documents related to these cases are available in the Office of the City Clerk.

The Hearing Examiner indicated that the primary appeal issue is that of compliance by the City in meeting the directions by the Hearing Examiner for additional environmental review. He also outlined the series of motions and responses that had been made prior to the pre-hearing conference. He noted that after reviewing the documents previously referenced and the various motions and responses that it was his intent to grant the City's September 16, 2005 Motion requesting a Summary Judgment and denial of the Appeal. He indicated this would be issued by Friday, September 23, 2005.

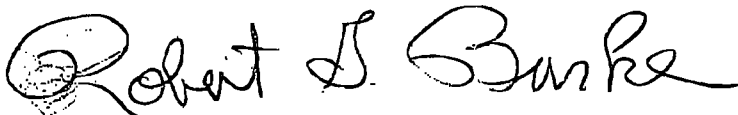
Ms. Elaine Phelps, Lead Representative of the Appellants, objected stating that without a hearing they could not present their expert witnesses to show the inadequacies of the City's response. The Hearing examiner indicated that he was convinced that the process used by the City and the information obtained met the direction for further analysis laid out in his previous decision. Flannery Collins, Assistant City Attorney, concurred that she felt granting the summary judgment as requested was appropriate. Mr. Rasch thanked the Hearing Examiner for the decision and indicated he would withdraw his motions if that would be helpful.

In response to a question by Ms. Phelps, it was noted that the decision was appealable to King County Superior Court. She noted the Appellants would meet to decide their future action.

IV. ORDER

Based on the foregoing, it is hereby ordered that the City's Motion for Summary Judgment is **GRANTED** and the Appellant's Appeal of the Reissued DNS is **denied**. All other motions made by the Appellant, Applicant and City are no longer relevant to this matter. The hearing previously established for September 29, 2005 is hereby cancelled.

ENTERED THIS 23RD DAY OF SEPTEMBER 2005:



ROBERT G. BURKE, HEARING EXAMINER

APPEAL:

Per Shoreline Municipal Code 2.15.110 decisions of the Hearing Examiner shall be appealable directly to King County Superior Court. Shoreline Municipal Code 20.30.250 outlines requirements that they normally be filed within 21 calendar days of the final decision by the City.